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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
09/883,075	06/15/2001	Marc Donis	A00774/70178 (EJR)	1583		
34705	7590	05/06/2005	<table border="1"><tr><td>EXAMINER</td></tr><tr><td>VINCENT, DAVID ROBERT</td></tr></table>		EXAMINER	VINCENT, DAVID ROBERT
EXAMINER						
VINCENT, DAVID ROBERT						
APRISMA MANAGEMENT TECHNOLOGIES, INC. 273 CORPORATE DRIVE PORTSMOUTH, NH 03801			ART UNIT	PAPER NUMBER		
			3628			

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/883,075	DONIS ET AL.
	Examiner David R Vincent	Art Unit 2664 3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 March 2005.
- 2a) This action is FINAL. This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4-9 and 11-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,4-9 and 11-30 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date, _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date, _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

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Response to Arguments

1. Applicant's arguments filed 3/16/05 have been fully considered but they are not persuasive.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-2, 4-9, 11-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Fan (US 6,324,165), as set forth in previous office action.

Response to Arguments

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In re pg. 8-11, the applicant argues that Fan fails to disclose e.g., having a buffer manager that includes a queue depth adjuster to adjust the queue depths.

In response, the examiner disagrees, and maintains that the DRC disclosed in Fan clearly meets these limitations. For example, Fan discloses buffers/queues having depths (reads on buffer/queue capacity) and the depths get adjusted (there is dynamic rate control/DRC and feedback which determines the current characteristics of the switch, the load or current capacity of the buffers and provides feedback to essentially load balance and control how many cells get stored in each buffer and make use of the extra capacity in the buffers, see dynamic rate based queues scheduler, Fig. 3 and respective, cols. 1-26, especially cols.7, line 45-col. 8, line 67; col. 9, lines 23-37; col. 10, lines 11-58; col. 12, lines 44-55; col. 13, line 4-col. 26, line 34), assigning queue depths (e.g., using feedback, DRC and/or setting thresholds, cols. 1-26, especially col. 7, lines 50-57).

One must remember that a queue by definition is merely a stream of tasks or a series of packets awaiting network resources. A queue is not a physical piece of hardware. So when the applicant argues Fan does not disclose adjusting queue

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depths, the applicant is really arguing that Fan does not disclose waiting periods.

In response, the examiner maintains Fan's DRC clearly does anticipate adjusting queue depths (see e.g., DRC scheduling, col. 7, lines 58-67; distributing unused bandwidth, col. 8, lines 1-4; dynamically adjusting BW, col. 10, lines 12-23; DRC shaping the queues, col. 12, lines 44-50; col. 13, lines 40-52; rates based on queue lengths, col. 13, lines 53-60; queue sizes adjusted, col. 15, lines 16-26; adjusting queue length, col. 21, lines 1-20; decreasing queue size, col. 23, lines 44-53).

The applicant also argues claim 30, identifying the queue with the highest corresponding QoS which is not empty.

The examiner maintains that Fan meets this limitation (see e.g., ID highest QoS/class, col. 15, lines 9-11; at least one cell in queue, col. 18, lines 44-46; using the priority bit, col. 19, lines 55-64; col. 25, lines 40-60).

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action

is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David R Vincent whose telephone number is 571 272 3080. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sam Sough can be reached on 571 272 6799. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David R Vincent
Primary Examiner
Art Unit 3628

April 20, 2005